



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 7710-99

26 July 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: FORMER [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) NCPB ltr 5420 Ser:00-007, 31 Mar 00
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that her naval record be corrected to show that she was retired by reason of physical disability.
2. The Board, consisting of Ms. Schnittman and Messrs. Ensley and Pauling, reviewed Petitioner's allegations of error and injustice on 22 June 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.
3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:
 - a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
 - b. Although, it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.
 - c. Petitioner enlisted in the Navy on 5 April 1993. On 4 July 1993, she reported that she had been raped on that day by an unknown assailant, and requested emergency medical care. She was evaluated at a mental health unit (MHU) on 6 July 1993, and reported sleeping problems, difficulty concentrating, and feelings of pain and helplessness since being assaulted. She was given a diagnosis of "R[ule]/O[ut] Post Traumatic Stress Disorder", and instructed to contact the MHU as needed for follow-up supportive counseling. On 19 July 1993, she reported continued and increased frequency of nightmares and anxiety secondary to the sexual assault. She reported that she was very unhappy in the Navy and wanted to be

discharged. Petitioner's advocate indicated that she would notify Petitioner's command and request a discharge for the convenience of the government. A medical record entry dated 21 July 1993 indicates that Petitioner wanted to be discharged because of multiple stress symptoms, and that in the opinion of the entry's author, a licensed clinical social worker, Petitioner should be discharged expeditiously. The social worker felt that "[o]nce discharged she can begin the recovery process from the assault." On 11 August 1993, Petitioner submitted a request for discharge "based on personal hardship". She reported that she had suffered from embarrassment, nightmares, loss of appetite, difficulty concentrating, and fear of another attack by the as yet to be identified or apprehended assailant. Her commanding officer favorably endorsed the request. He noted that because of the rape and resulting post traumatic stress disorder, Petitioner was incapable of serving adequately in the Navy. Petitioner's request was granted, and she was discharged by reason of "Reduction in Force" on 20 September 1993.

d. The Department of Veterans Affairs (VA) awarded Petitioner a 10% rating for post traumatic stress disorder effective 8 July 1998, the date of her initial claim, pending completion of a VA examination. She was examined on 17 December 1998, and reported that she developed a severe alcohol abuse problem after being discharged from the Navy. She indicated that she suffered from about the same level and types of symptoms of stress as those she had experienced in the Navy. She reported that she had been "in and out" of jobs since discharge, but denied any difficulties of any kind at her jobs. Upon further questioning, she reported that she had had multiple jobs because of her "bad attitude", and difficulty in dealing with customers. She stated that she had stopped working about four months before the examination was conducted, due to an automobile accident in which she injured her back. The VA increased her disability rating to 30% on 12 January 1999, effective 8 July 1998. The rating official noted that a 30% rating was appropriate where there was occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily with routine behavior, self-care and conversation normal) due to such symptoms as depressed mood, anxiety, suspiciousness, panic attacks (weekly or less often), chronic sleep impairment, and mild memory loss.

e. In correspondence attached as enclosure (2), the Director, Naval Council of Personnel Boards, advised the Board, in effect, that Petitioner suffered symptoms compatible with a diagnosis of post traumatic stress disorder while on active duty, which rendered her unfit for duty. The occupational adjustment data contained in the record, while limited, indicates that she was able to maintain steady employment for approximately four years after her discharge, and that her symptoms did not affect her civilian occupational adjustment during that period. In the director's opinion, Petitioner's job loss appears to be more attributable to injuries received in an automobile accident than to her post traumatic stress disorder. The director recommended that her record be corrected to show that she was discharged by reason of physical disability rated at 10%, with entitlement to disability severance pay.

f. Disability severance pay is computed by multiplying the service member's monthly basic pay times the years of service, with periods of service of less than six months being disregarded. As Petitioner served for 5 months and 16 days, that computation would yield a severance pay entitlement of \$0.00.

CONCLUSION:

Upon review and consideration of all the evidence of record and notwithstanding the comments contained in enclosure (2), the Board concludes that Petitioner should have been retired by reason of physical disability.

The Board was disturbed by the fact that Petitioner was expeditiously discharged from the Navy when she was clearly unfit for duty and in need of therapy due to the psychological effects of being raped. Rather than being referred to the Disability Evaluation System, she was administratively discharged and left to her own devices. Following her discharge, she was able to work in civilian occupations, but had substantial occupational instability. In addition, she developed a severe alcohol abuse problem, which may have begun as an attempt to self-medicate her psychiatric symptoms. The Board finds that her condition was more severe than indicated by the 10% rating recommended by the Director, Naval Council of Personnel Board. It noted that the 10% rating is reserved for mild psychiatric conditions which produce a decrease in work efficiency and ability to perform occupational tasks only during periods of significant stress. Although Petitioner's condition does not meet all the criteria for a 30% rating, as she was able to maintain employment, the Board believes that her disability more nearly approximates the criteria for the 30% rating than it does for the 10% rating, and that reasonable doubt should be resolved in her favor.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that she was not discharged from the Navy on 20 September 1993.

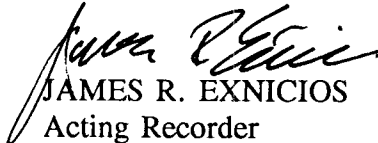
b. That Petitioner's naval record be further corrected to show that on 19 September 1993, while she was entitled to receive basic pay, the Secretary of the Navy found her unfit to perform the duties of her rate by reason of physical disability due to post traumatic stress disorder, which was incurred while Petitioner was entitled to receive basic pay; that the disability is not due to intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; that the disability was incurred in the line of duty after 14 September 1978; that the disability is considered to be ratable at 30% in accordance with the Standard Schedule for Rating Disabilities in use by the Veterans Administration at the time the Secretary found Petitioner unfit, Code Number 9411; and that accepted medical

principles indicate the disability is of a permanent nature, accordingly, the Secretary directed that Petitioner be permanently retired by reason of physical disability effective 21 September 1993, pursuant to 10 U.S. Code 1201.

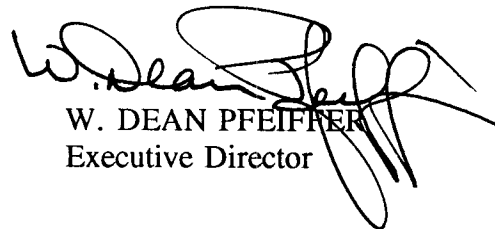
c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.


ROBERT D. ZSALMAN
Recorder


JAMES R. EXNICIOS
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.


W. DEAN PFEIFFER
Executive Director

Reviewed and approved: AUG 18 2000


Joseph G. Lynch
Assistant General Counsel
(Manpower & Reserve Affairs)